

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASPER'S ELECTRONICS, INC.

Defendant.

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) Civil Action No. 1:06-cv-03542
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) Judge Mark Filip
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CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, at the request of the Administrator of the United States Environmental Protection Agency ("EPA") and by authority of the Attorney General, filed a Complaint herein against defendant Casper's Electronics, Inc. ("Casper") alleging violations of Title II of the Clean Air Act (the "Act"), as amended, 42 U.S.C. § 7401 *et seq.*, for manufacturing, offering to sell, and selling motor vehicle parts or components, specifically oxygen sensor simulators, whose effect is to bypass, defeat, or render inoperative a motor vehicle emission control device or element of design;

WHEREAS, Section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7522(a)(3)(B), prohibits any person from manufacturing, selling, offering for sale, or installing, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device

or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use;

WHEREAS, the Complaint alleges that Casper manufactured and sold oxygen sensor simulators that a principal effect of these simulators was to bypass, defeat, or render inoperative a device or element of design installed in motor vehicles to control the emission of pollutants;

WHEREAS, the United States sought injunctive relief and the assessment of civil penalties;

WHEREAS, Casper has represented that prior to the effective date of this Consent Decree it has stopped selling the oxygen sensor simulators and has repurchased some of the oxygen sensor simulators that it sold;

WHEREAS, the United States asserts that it is entitled to recover the economic benefit realized by Casper from the unlawful sale of the oxygen sensor simulators of at least \$260,000, plus an additional amount reflecting the gravity of the violations;

WHEREAS, Casper has demonstrated a financial inability to pay a penalty greater than the amount provided below;

WHEREAS, the United States and Casper have consented to entry of this Consent Decree without trial of any issues; and

WHEREAS, the United States and Casper recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the United States and Casper in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation between the United States and Casper, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, of this Consent Decree, and with the consent of the parties, it is hereby ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject-matter of this action and the Parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and Sections 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524.

2. Venue in this Court is proper pursuant to Sections 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524. For purposes of this Decree, or any action to enforce this Decree, Casper consents to the Court's jurisdiction over this Decree or such action and over Casper, and consents to venue in this judicial district.

3. For purposes of this Consent Decree, Casper agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 203, 204, and 205 of the Act, 42 U.S.C. §§ 7522, 7523, and 7524.

II. DEFINITIONS

4. Unless specifically defined in this Section or elsewhere in this Consent Decree, terms used herein shall have the meanings currently set forth in Sections 202, 216, and 302 of the Act, 42 U.S.C. §§ 7521, 7550, and 7602, and the regulations promulgated under Title II of the Act, 42 U.S.C. §§ 7521-7590.

"Act" means the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*

“Defeat Device” is a motor vehicle part or component, including oxygen sensor simulators, whose principal effect is to bypass, defeat, or render inoperative a motor vehicle emission control device or element of design, including such emission control devices or elements of design required by 40 C.F.R. §§ 86.094-17 or 86.099-17.

“Oxygen Sensor Simulator” is a defeat device which simulates on a motor vehicle the signal coming from the rear oxygen sensor to the vehicle’s onboard diagnostic system. This simulation prevents the onboard diagnostic system from activating the vehicle’s malfunction indicator light and storing computer malfunction codes when the vehicle’s catalytic converter malfunctions.

“Effective Date” is the date the Consent Decree is entered by the Court.

“EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies.

“Interest” means interest at the rate allowed on money judgments pursuant to 28 U.S.C. § 1961.

“United States” means the United States of America, acting on behalf of EPA.

III. APPLICABILITY

5. This Consent Decree applies to and is binding upon the United States and upon Casper, its successors, and assigns, and those otherwise bound by operation of law. Unless approved by the Parties in writing, any change in Casper’s ownership or corporate status shall in no way alter Casper’s responsibilities under this Consent Decree. In any action to enforce this Consent Decree, Casper shall not raise as a defense the failure of its officers, directors, agents,

servants, contractors, or employees or their successors to take actions necessary to comply with the provisions hereof.

6. Casper shall provide a copy of this Consent Decree to any contractor retained to perform work required under this Consent Decree. Casper shall not assert as a defense to any action to enforce this Consent Decree the failure of any Casper officer, employee, or agent to have received a copy of this Consent Decree.

IV. INJUNCTIVE RELIEF

A. Prohibition on Manufacturing, Selling, or Transferring Emission Defeat Devices

7. Casper shall no longer manufacture, offer for sale, sell, convey or otherwise transfer any Defeat Device, including but not limited to oxygen sensor simulators.

8. Casper shall not offer for sale, sell, convey or otherwise transfer in any way the design, technology or manufacturing processes or techniques used to manufacture any emission defeat device, including oxygen sensor simulators, to any other individual or entity, including but not limited to individuals or business entities.

9. Casper shall provide a copy of Appendix A to this Decree to each of its officers, directors and employees notifying them that it is a violation of the Clean Air Act for any of them to be involved in the manufacture, sale, or offering for sale of any emission defeat device including oxygen sensor simulators. Casper shall request that each officer, director, and employee return a signed copy of Appendix A to Casper to acknowledge receipt of Appendix A.

B. Recall and Repurchase Program

10. Within 30 days of the effective date of this Decree, Casper shall implement an oxygen sensor simulator Recall and Repurchase Program by sending by first class mail or email

a letter in the language contained in Appendix B to this Decree to all purchasers of its oxygen sensor simulators or individuals or entities to whom Casper transferred possession of any simulators, including any direct purchasers as well as any third party resellers or distributors, identifiable by Casper following a complete review of any records that it maintained or obtained on such individuals or entities

11. Casper shall issue the letter as part of the Recall and Repurchase Program.

12. Casper shall refund the purchase price of any oxygen sensor simulator returned under this Recall and Repurchase Program within thirty days from Casper's receipt of the simulator and shall keep records of all such returns.

C. Destruction of oxygen sensor simulators

13. Within thirty days from the effective date of this Consent Decree or its receipt of the returned simulators, as applicable, Casper shall disable all oxygen sensor simulators in its possession or returned to it under the Recall and Repurchase Program in a manner that will render the device incapable of being reassembled or reused. In disabling the oxygen sensor simulators, Casper shall, at a minimum, destroy the computer chip, circuit board, or other electronic component or components that simulate or alter the electronic signals coming from an oxygen sensor.

14. Within thirty days from the effective date of this Consent Decree, Casper shall offer to destroy all oxygen sensor simulators in the possession of any of Casper's officers, directors, agents, servants, or employees or installed on any motor vehicles owned, operated, or under the control of any of Casper's officers, directors, agents, servants, or employees.

15. Casper shall maintain a record of the source of each oxygen sensor simulator removed or returned, the number from each source, and the number of oxygen sensor simulators that it destroys.

D. Compliance Report

16. Casper shall submit three Compliance Reports to EPA containing the information described below. The first such Compliance Report shall be submitted 90 days after the effective date of this Decree, the second Compliance Report shall be submitted 180 days after the effective date of this Decree, and the third Compliance Report shall be submitted one year after the effective date of this Decree.

a. Casper shall report whether it, or any of its officers, directors, agents, servants, or employees, offered for sale, sold, conveyed, or otherwise transferred in any way the design, technology, or manufacturing process or techniques used to manufacture any emission defeat devices, including oxygen sensor simulators to any other entity from January 1, 2000 to the date of the Report. If such a transfer occurred, Casper shall report the known name and contact information, including address, of any individual or entity to which such process or technique was transferred.

b. Casper shall report whether it provided Appendix A to all of its officers, directors, or employees and the name and last known address of any such individuals or entities who has not returned a signed copy of Appendix A acknowledging receipt.

c. Casper shall report the total number of oxygen sensor simulators that it manufactured and how it determined the total number manufactured.

- d. Casper shall report the total number of oxygen sensor simulators that it sold and how it determined the total number sold.
- e. Casper shall report the total number of entities to which it sold oxygen sensor simulators and how it determined the number of entities.
- f. Casper shall report the total number of oxygen sensor simulators that it received in response to the Recall and Repurchase Program required by this Decree, and how many it received as part of the voluntary recall Casper initiated prior to the effective date of this Decree.
- g. Casper shall report the name and contact information, including address, of any individual or entity that purchased or otherwise acquired ten or more oxygen sensor simulators and shall report whether such simulators were returned as part of the Recall and Repurchase Program required by this Decree or the voluntary recall program initiated by Casper.
- h. Casper shall report the total number of oxygen sensor simulators that it destroyed.

V. REPORTING

17. Each report or other notice required by this Consent Decree shall be accompanied by a transmittal letter referencing the appropriate Paragraph or Appendix of this Consent Decree. Casper shall, through a duly authorized representative having knowledge of the contents of the notice, submission, or report, sign and certify under 28 U.S.C. § 1746 as follows:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

Casper shall not object to the admissibility in evidence of any such reports in a proceeding to enforce this Consent Decree.

18. Compliance with the reporting and notification requirements of this Consent Decree shall not relieve Casper of its obligation to comply with any other reporting or notification requirements imposed by any applicable federal, state, or local laws, regulations, or permits.

19. All reports, notifications to, or communications with the United States shall include the Civil Action Number (1:06-cv-03542) and the DOJ Number (90-5-2-1-08630).

20. Unless otherwise provided herein, reports, notifications to, or communications with the United States or Casper shall be deemed submitted on the date they are postmarked and sent by first class mail, overnight receipt mail service, or by certified or registered mail, return receipt requested. Except as otherwise specifically provided herein, when written notification to or communication with the United States, EPA, or Casper is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08231

For EPA:

Director
Air Enforcement Division (2242A)
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Ariel Rios Building South
Washington, D.C. 20004

With a copy to:

Judy Lubow
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
12345 W. Alameda Parkway, Suite 214
Denver, Colorado 80228

As to Casper:

John Spina
Casper's Electronics, Inc.
1333 Wilhelm Road
Mundelin, Illinois 60060

With a copy to:

Michael T. Beirne
Quinlan & Carroll, Ltd.
30 N. LaSalle Street
Suite 2900
Chicago, Illinois 60602

All Parties to the Consent Decree may change the address for providing notices to it by serving all other addressees identified above with a written notice setting forth the new address.

VI. CIVIL PENALTIES

21. Casper shall pay to the United States the sum of \$74,383, plus interest, as a civil penalty according to the schedule set forth below:

- a. Casper shall pay an initial installment of \$20,000 within 30 days of the effective date of the Decree.
- b. Casper shall pay a second installment of \$20,000 within one year of the effective date of the Decree.
- c. Casper shall pay a third installment of \$20,000 within two years of the effective date of the Decree.
- d. Casper shall pay a fourth and final installment of \$20,000 within three years of the effective date of the Decree.

22. The second, third, fourth installment payments of the Civil Penalty include interest at the rate specified in 28 U.S.C. § 1961 and no additional interest shall accrue unless a portion of the Civil Penalty is late.

23. Payment shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice ("DOJ") in accordance with instructions to be provided to Casper following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office. Any EFT received at the DOJ lockbox bank after 11:00 a.m. Eastern Time will be credited on the next business day. Notice of the EFT shall simultaneously be mailed to the contacts for the United States and EPA listed in the Reporting Section above.

24. Casper shall not deduct the civil penalty required by this Decree in calculating its federal income tax.

25. The United States shall be deemed a judgment creditor for purposes of collection of the civil penalty required by this Decree.

VII. STIPULATED PENALTIES

26. Casper shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under the Force Majeure Section of this Decree. A violation includes failing to perform any obligation required by the terms of this Decree within the specified time schedules established by or approved under this Decree.

27. The following Stipulated Penalties shall accrue per violation per day for each violation of a requirement identified as follows:

- a. For failure to pay any of the four civil penalty installment payments required by this Decree when due: \$200 per day for the first thirty days that a payment is late, \$400 per day for any delay beyond thirty days.
- b. For manufacturing any emission defeat device, including but not limited to oxygen sensor simulators: \$2,000 per each such device.
- c. For offering for sale, selling, conveying or otherwise transferring any emission defeat device, including but not limited to oxygen sensor simulators: \$2,500 per each device.
- d. For selling, giving, conveying or otherwise transferring in any way the process or techniques used to manufacture emission defeat devices, including oxygen sensor simulators, to any other entity, including but not limited to individuals or business entities: \$10,000 for each such sale, gift, or transfer.
- e. For failure to provide Appendix A to any of Casper's officers, directors, or employees: \$500 per such individual or entity.
- f. For failure to commence the Recall and Repurchase Program within 30 days of the effective date of this Decree: \$100 per day for the first thirty days of the delay; \$500 per day for any delay beyond thirty days.
- g. For failing or refusing to accept an oxygen sensor simulator from, or providing reimbursement to, an individual or entity who returns an oxygen sensor simulator under the Recall and Repurchase Program: \$400 per each such individual or entity.
- h. For failure to record or report, in any Compliance Report required by this Decree, the number of oxygen sensor simulators received in response to the Recall and Repurchase Program: \$2,500.

i. For failure to destroy, as set forth in Section IV(C) above, any oxygen sensor simulator in its possession: \$500 per each device.

j. For failure to submit any Compliance Report required by this Decree: \$100 per day for the first thirty days that a payment is late, \$400 per day for any delay beyond thirty days.

k. For failure to create, maintain, or provide copies of any records or reports as required by this Consent Decree: \$50 per day for the first thirty days of delay; \$100 per day for the next thirty days of delay; and \$300 per day for any delay beyond sixty days.

28. Stipulated Penalties shall continue to accrue as provided below during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Casper shall pay accrued penalties determined to be owing, together with Interest, to the United States within thirty days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Casper shall pay all accrued penalties determined by the Court to be owing, together with Interest, within sixty days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Casper shall pay all accrued penalties determined to be owing, together with Interest, within fifteen days of receiving the final appellate court decision.

29. The Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Casper's violation of this Consent Decree or applicable law.

30. If a date by which Casper must meet any obligation of this Consent Decree falls on a holiday or weekend, the due date shall be the next working day. Stipulated civil penalties shall automatically begin to accrue on the first day Casper fails to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue until the violation or deficiency is corrected. Stipulated penalties shall continue to accrue throughout any dispute resolution process.

31. Stipulated penalties shall be paid no later than thirty days following the first day in which EPA sends to Casper a demand for payment of the stipulated penalties which have accrued to date together with an explanation for the basis(es) for the demand. Casper shall pay Stipulated Penalties owing to the United States by EFT in accordance with the Civil Penalty Section of this Consent Decree.

32. Casper shall not deduct Stipulated Penalties paid under this Section in calculating its federal income tax.

33. If Casper fails to pay Stipulated Penalties according to the terms of this Consent Decree, Casper shall be liable for Interest on such penalties accruing as of the date payment became due.

34. Notwithstanding any other provision of this Decree, the United States may, in its unreviewable discretion, waive any portion of a stipulated penalty that has accrued pursuant to this Decree.

VIII. FORCE MAJEURE

35. A "force majeure event" is any event beyond the control of Casper, its contractors, or any entity controlled by Casper that delays the performance of any obligation under this Consent Decree despite Casper's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Casper's financial inability to perform any obligation under this Consent Decree.

36. Casper shall provide written notice as provided in the Reporting Section of this Consent Decree, within fourteen days of the time Casper first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state: the anticipated duration of any delay; its cause(s); Casper's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Casper's rationale for attributing any delay to a force majeure event. Failure to provide notice as required by this Paragraph shall preclude Casper from asserting any claim of force majeure. Casper shall adopt all reasonable measures to avoid or minimize such delay.

37. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Casper to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to the Modification Section of this Consent Decree.

38. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Casper, the United States' position shall be binding, unless Casper invokes Dispute Resolution under the Dispute Resolution Section of this Consent Decree. In any such dispute, Casper bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event, that Casper gave the notice required, that the force majeure event caused any delay Casper claims was attributable to that event, and that Casper exercised best efforts to prevent or minimize any delay caused by the event.

IX. DISPUTE RESOLUTION

39. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Casper's failure to seek resolution of a dispute under this Section shall preclude Casper from raising any such issue as a defense to an action by the United States to enforce any obligation of Casper arising under this Decree.

40. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Casper sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within forty-

five days after the conclusion of the informal negotiation period, Casper invokes the formal dispute resolution procedures contained in this Consent Decree.

41. Formal Dispute Resolution. Casper shall invoke formal dispute resolution procedures, within the time period provided in this Consent Decree, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Casper's position and any supporting documentation relied upon by Casper.

42. The United States shall serve its Statement of Position within forty-five days of receipt of Casper's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Casper, unless Casper files a motion for judicial review of the dispute in accordance with this Consent Decree.

43. Casper may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with the Reporting Section of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within forty-five days of receipt of the United States' Statement of Position pursuant to the formal dispute resolution terms of this Consent Decree. The motion shall contain a written statement of Casper's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

44. The United States shall respond to Casper's motion within the time period allowed by the Local Rules of this Court. Casper may file a reply memorandum, to the extent permitted by the Local Rules.

45. In any dispute brought before the Court, Casper shall bear the burden of demonstrating that its position clearly complies with and furthers the objectives of this Consent Decree and the Clean Air Act and that Casper is entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

46. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Casper under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute. If Casper does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in the Stipulated Penalties Section of this Decree.

X. RIGHT OF ENTRY/RECORDS RETENTION

47. Subject to and in compliance with the requirements of Section 208 of the Act, 42 U.S.C. § 7542, EPA and its authorized representatives and contractors are authorized, upon presentation of appropriate credentials:

a. to enter, at reasonable times, the premises of Casper for the purposes of inspecting or observing any activity conducted pursuant to this Consent Decree; and

b. to inspect and review any record required to be kept under the terms and conditions of this Consent Decree.

48. Casper shall maintain the following records:

a. Any documents reflecting or constituting communications with any individual or entity to whom a letter was sent under the Recall and Repurchase Program or who was a part of Casper's voluntary recall program prior to this Decree.

b. Any documents upon which Casper relied in making any report required pursuant to this Consent Decree.

49. Casper shall make these records available to EPA upon request. Casper shall retain all such records for a period of five years after termination of this Consent Decree. All information and documents submitted by Casper to the United States pursuant to this Consent Decree shall be subject to public inspection, unless identified and supported as confidential business information by Casper in accordance with 40 C.F.R. Part 2. Nothing herein shall be construed to require Casper to allow EPA access to documents protected by any applicable privilege.

50. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by EPA pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Casper to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF DECREE

51. This Consent Decree resolves the United States' civil claims for penalties and injunctive relief under Sections 203, 204, and 205 of the Act, 42 U.S.C. §§ 7522, 7523, and 7524 with respect to the violations alleged in the Complaint through the date of lodging of this Decree.

52. This Consent Decree does not limit or affect the rights of Casper or of the United States against any third parties not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree, against Casper, except as otherwise provided by law.

53. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. NON-WAIVER PROVISIONS

54. This Consent Decree in no way affects or relieves Casper of any responsibility to comply with any federal, state, or local laws or regulations.

55. Casper is responsible for achieving and maintaining complete compliance with all applicable federal and state laws and regulations, and compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws and regulations, except as otherwise expressly specified in the Consent Decree.

56. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

57. This Consent Decree shall not limit any authority of EPA under the Clean Air Act or any applicable statute, including the authority to seek information from Casper or to seek

access to the property of Casper. The United States reserves all remedies available to it for violations of the Clean Air Act by Casper that are not alleged in the Complaint as well as for violations of the Clean Air Act by Casper that occur after the date of lodging of this Consent Decree.

58. This Consent Decree does not resolve criminal liability, if any, that any person might have for violations of the Clean Air Act.

59. Nothing in this Consent Decree shall be construed to limit the authority of the United States to undertake any action against any person, including Casper, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

XIII. COSTS OF SUIT

60. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Casper.

XIV. MODIFICATION

61. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

XV. PUBLIC COMMENT AND ENTRY OF CONSENT DECREE

62. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration by the United States of any comments. The United States reserves the right to withdraw or withhold its consent on the basis of such comments. This Paragraph does not create any rights exercisable by Casper.

63. Casper consents to the entry of this Consent Decree without further notice.

XVI. TERMINATION

64. This Consent Decree will terminate upon further order of this Court 90 days after the last required event under this Decree, after Casper serves upon the United States, together with all necessary supporting documentation, a Request for Termination stating that Casper has: made all civil penalty payments required by this Consent Decree, including any accrued interest;

- a. paid in full any Stipulated Penalties imposed by this Consent Decree; and
- b. completed all other requirements of this Consent Decree.

65. Following receipt by the United States of Casper's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Casper has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with EPA, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

66. If the United States, after consultation with EPA, does not agree that the Decree may be terminated, Casper may invoke Dispute Resolution under this Decree. However, Casper shall not seek Dispute Resolution of any dispute regarding termination until 120 days after service of its Request for Termination.

XVII. SIGNATORIES/SERVICE

67. Each undersigned representative of Casper, EPA, and the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

68. Casper agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Casper in writing that it no longer supports entry of the Decree.

69. Casper agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XVIII. INTEGRATION

70. This Consent Decree, including the Appendices identified, constitute the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings,

whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and submittals that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XIX. FINAL JUDGMENT

71. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Casper.

XX. RETENTION OF JURISDICTION

72. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree, to the extent that this Consent Decree provides for resolution of disputes by the Court.

XXI. APPENDICES

73. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the notification to Casper’s officers, directors, and employees regarding the manufacture, sale, or transfer in any way any oxygen sensor simulator or the process or techniques they or Casper used to manufacture emission defeat devices, including oxygen sensor simulators;

"Appendix B" is the text of the oxygen sensor simulator Recall and Repurchase Program letter.

SO ORDERED AND APPROVED in accordance with the foregoing this _____ day of _____, 2007

Judge Mark Filip
United States District Judge
Northern District of Illinois

Signature Page – United States v. Casper's Electronics, Inc.

FOR PLAINTIFF, UNITED STATES OF AMERICA

DATE

5/8/07

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Environment and Natural Resources Division
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Signature Page – United States v. Casper's Electronics, Inc.

Signature Page – United States v. Casper's Electronics, Inc.

FOR DEFENDANT,

MAY 10 2007
DATE

JOHN SPINA
Casper's Electronics, Inc.
1333 Wilhelm Road
Mundelin, Illinois 60060

United States v. Casper's Electronics, Inc.

APPENDIX A

TO: ALL OFFICERS, DIRECTORS, AND
EMPLOYEES OF CASPER'S
ELECTRONICS, INC.

Casper's Electronic's's Inc. (Casper) has been involved in litigation with the federal government over the sale of our former product, the oxygen sensor simulator. The United States Environmental Protection Agency ("EPA") has alleged that the sale of the simulator violated the Clean Air Act provision at 42 U.S.C. § 7522(a)(3)(B), prohibiting the manufacture, sale, or installation of any motor vehicle part or component intended for use with a motor vehicle or motor vehicle engine where a principal effect of the part or component is to bypass, defeat or render inoperative emission control devices or elements of design, such as catalytic converters, oxygen sensors, malfunction indicator lights, or onboard diagnostic systems.

As a result of the litigation, Casper no longer manufactures, sells, or transfers the simulators and has resolved the lawsuit filed by the United States through a Consent Decree, which is available for your review.

Any individual that undertakes or has undertaken any of the prohibited actions described above may be subject to a civil action under the Clean Air Act.

I acknowledge receipt of this notification provided to me pursuant to the Consent Decree between the United States and Casper.

[signature]

[print name]

[title]

[date]

United States v. Casper's Electronics, Inc.

APPENDIX B

[Customer Address]

**NOTICE OF PRODUCT RECALL AND REPURCHASE FOR OXYGEN SENSOR
SIMULATORS**

Dear Customer:

Casper's Electronic's Inc. is recalling and repurchasing any oxygen sensor simulators that you may have acquired directly from Casper's or one of its distributors or resellers.

Casper's Electronic's's Inc. (Casper) has been involved in litigation with the federal government over the sale of our former product, the oxygen sensor simulator (Simulator). The United States Environmental Protection Agency ("EPA") has alleged that the Simulator is an illegal "defeat device" that violates the Clean Air Act's prohibition against the installation of equipment on a motor vehicle that defeats or renders inoperative its emission controls. While Casper denies these allegations, in order to avoid the time and expense of litigation, Casper has agreed to settle this lawsuit, cease the manufacture and sale of the Simulators, and conduct this Simulator recall and repurchase program

Please be advised that under the Clean Air Act, it is a violation for any person to knowingly remove or render inoperative an emission control device. Therefore the installation of an oxygen sensor simulator onto a motor vehicle is also a violation of the Clean Air Act, with violators subject to a penalty of up to \$2,750 for each such vehicle on which a simulator is installed. In addition, vehicles equipped with oxygen sensor simulators may also violate state and local inspection and maintenance requirements, which may result in state or local penalties for the owner of such a vehicle

As part of the resolution of this litigation, Casper has agreed to send this recall and repurchase letter to all its customers, informing you that Casper is willing to buy back any Casper Simulator that we have provided you. Similarly, we extend this buy-back offer to the customers of our distributors who purchased a Casper Simulator from our distributors. We will refund to you the full purchase price for each of the Casper Simulators that you purchased and will return to us, plus any mailing expense you may incur in returning the Simulator to us. We regret any inconvenience this may cause you.

If you wish to accept this offer by sending us any Casper Simulator you have purchased from us or one of our distributors, please send the Simulator to our address listed above in the letterhead. Please indicate your own return address. You must also identify whether you purchased the Simulator from us or identify the distributor from whom you purchased it. Finally, you must notify us of the purchase price you paid for the Simulator. We will then refund the purchase price to you, plus reimburse you your mailing expenses. If you have any questions about this offer, you may call us at _____.